



State of New York

OFFICE OF THE ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

Civil Enforcement Division, 120 Broadway, 13th Floor, New York, New York 10271-0007

(212) 417-5300

Fax: (212) 417-5335 (Not for service of papers)

ERIC T. SCHNEIDERMAN
Attorney General

AMY HELD
Acting Director

PAUL J. MAHONEY
Assistant Deputy Attorney General

August 7, 2015

Honorable Margo K. Brodie
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *U.S. ex rel. Lee et al. v. Northern Adult Daily Health Care Center et al.*
Case No. 13-CV-4933 (MKB)(JO)
Request for Order Striking Relators' Motion for Alternative Remedies (Docket #30)

Dear Judge Brodie:

I write respectfully on behalf of this Office, which represents the plaintiff State of New York (“the State”) in this action, which was filed by Relators pursuant to the provisions of the federal False Claims Act, as amended, 31 U.S.C. §§ 3729 *et seq.* and the New York False Claims Act, State Finance Law §§ 187 *et seq.* As the Court is aware, the State declined to intervene in the action on September 8, 2014, as did the United States. For the reasons set forth below, we respectfully request that the Relators’ recent motion, served on the State on July 27, 2015, be denied or be stricken from the docket, on the grounds that it is premature.

On or about July 27, 2015, Relators served the State with a motion “seeking alternative remedies,” namely a portion of the State’s previous recovery in a separate proceeding. As discussed at the February 11, 2015 Pre Motion Conference, Relators’ motion as well as any discussion as to Relators’ entitlement to an alternative remedy is premature at best. As the Court previously directed at that Conference, this issue will not be addressed, if at all, until it has been established that Relators have brought a valid *qui tam* action. Accordingly, and logically, the matter of alternative remedies was tabled until after the Court had ruled on defendants’ motion to dismiss, which was presumed to be forthcoming. Under the current briefing schedule, defendants have until August 10, 2015, to file responsive papers to Relators’ amended complaint. We have recently been advised that defendants will likely file a motion to dismiss at that time.

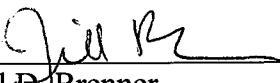
In conclusion, given that the Relators' current motion is premature, the State respectfully requests that the Court issue an Order striking it from the docket.

Thank you for your consideration of this request.

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By:



Jill D. Brenner
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway
New York, NY 10271-0007
Phone: (212) 417-5377
Fax: (212) 417-4604